

Appl. No.: 10/813,452
Atty. Dkt.: 2M337/03002
Inventor: Lomafuma

REMARKS

Assignee's attorney hereby provisionally elects Group I including Claims 1-13, subject to traverse.

The Examiner recites that the combination as claimed does not require the particulars of the sub-combination as claimed because a slidable base plate is not required for leveling. In restricting Groups I and II, the Examiner states that the sub-combination (Group II) has separate utility such as leveling device with more adjustability. In response to the Examiner's allegation in comparing Groups I and II that "a slidable base plate is not required for leveling..." in Group I (the combination), Assignee's attorney respectfully asserts that the Examiner is mistaken. Claim 1 recites, "a base plate *being slidable relative to said base*." Likewise, Claim 14 recites, "a base plate *slidably positioned in a base...*" Accordingly, the Examiner's statement that "the combination...does not require the particulars of the sub-combination...because a slidable base plate is not required for leveling," is incorrect since Claims 1 and 14 each require a slidable base plate, contrary to the Examiner's allegations. Assignee's attorney respectfully requests this restriction requirement withdrawn.

The Examiner further alleges that inventions I or II and III or IV or V are unrelated. The Examiner alleges that in the instant case, the different inventions include a leveling device, an adjustable bat fixture, a positioning fixture and a positioning clamp. Upon comparison of the Examiner's statement with the independent claims of Applicant's claim set, it is clear that the Examiner has made a five-way restriction based on the claim preambles. Such action is

Appl. No.: 10/813,452
Atty. Dkt.: ZM337/U3002
Inventor: Lamsfusq.

improper where the preamble does not provide limiting structure which provides the "different modes of operation, different functions, or different effects," alleged by the Examiner. Moreover, without such limiting structure in the preamble, Assignee's attorney asserts that the Examiner should be able to perform a single search encompassing all of the claimed embodiments.

The Examiner is respectfully reminded that preamble language does not generally limit the claim scope without clear reliance on those benefits or features as patentably significant.

Catalina Mktg. Int'l. v. Coolsaving.com, Inc., 289F.3d ct 808-09 (Fed. Cir. 2002). ("A preamble generally is not limiting when the claim body describes a structurally complete invention such that the deletion of the preamble phrase does not affect the structure or steps of the claimed invention.") Here, the preamble phrases of the independent claims fail to limit the claim scope since the claims are structurally complete without the preamble language and further since there is a lack of reliance upon the preamble language for antecedent basis or the like. Thus, the Examiner's reliance on preamble language in making the five-way restriction is improper.

Assignee's attorney respectfully requests the restriction requirement removed.

CONCLUSION

Assignee's attorney believes that the instant application is now in condition for allowance and therefore respectfully requests that the Examiner allow the pending claims. However, if the Examiner believes there are other unresolved issues in this case, Assignee's attorney of record would appreciate a call at (502) 584-1135 to discuss such remaining issues.

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Appl. No.: 10/813,452
Atty. Dkt.: ZM337/03002
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Respectfully submitted,

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